IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.874 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006

Ms. President promoters & builders,
Registered Partnership Firm,
Through Partner:
Shri.Vidhyadhar Nagorao Gulhane ...Applicant

V/s.
Shri.Kishore Ramchandra Bijve & Anr ...Respondents

Mr.V.V. Purwant for Applicant.
Mr.R.H. Shah for Respondent No.1.
Mr.Y.S. Shinde APP for the State.

CORAM : V.M. KANADE, J.
DATED : 12th SEPTEMBER, 2007.

P.C:-

1. Heard learned counsel for the Applicant and learned counsel for the Respondent No.1.

2. The Applicant is the original complainant who had filed a complaint of criminal breach of trust against the Respondent No.1 herein. Case of the Complainant is that Complainant and the Respondent No.1 were partners and that a Maruti Van was purchased in the name of partnership firm. It is case of

the Complainant that this Maruti Van was sold by the Respondent No.1 without obtaining his consent. The Trial Court on the basis of evidence adduced between the parties, came to the conclusion that no case was made out by the Complainant and therefore, acquitted the the Respondent No.1. Being aggrieved by the aforesaid order, present application has been filed for leave to appeal.

3. It is submitted by the learned counsel for the Applicant that the Respondent No.1 had dominion over the Maruti Van and as such without obtaining consent of the Applicant, it was not open for the Respondent No.1 to sell the said Maruti Van.

4. In my view, this submission cannot be accepted. I have perused the evidence of the Complainant. He has admitted in the cross examination that there was no specific agreement between the parties and as such, it cannot be stated that the Accused had dominion over the Maruti Van as a result of said specific agreement. Apex Court in the catena of cases has held that if dominion over the property is not established, in that case partner cannot be charged for the offence punisahble U/s.406 or 409 of IPC. Apex

Court in the case of **Velji Raghavji Patel V/s. State of Maharashtra repoted in AIR 1965 SC 1433** has observed as under:-

> "10. It seems to us that the view taken in Bhuban Mohan Rana's case(I.L.R.1962 11 Cal.23.) by the later Full Bench of the Calcutta High Court is the right one. Upon the plain reading of section 405, I.P.C. it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of section 405. In order to establish "entrustment of dominion" over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. Therefore, as rightly pointed out by Harris C.J., the prosecution must establish that dominion over the assets or a particular asset of the partnership was, by a special agreement between the parties, entrusted to the accused person. If in the absence of such a special

agreement a partner received money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been "entrusted" with dominion over partnership properties."

5. Hence, there is no infirmity in the order passed by the Trial Court. No case is made out for grant of leave. Leave is refused. Appeal is dismissed.

. Criminal Application is dismissed and disposed of accordingly.

V.M. KANADE, J.